

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC. : Civil Action No.
vs. : 3:09CV620
LAWSON SOFTWARE, INC. : January 24, 2011

COMPLETE TRANSCRIPT OF THE JURY TRIAL

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE, AND A JURY

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P R O C E E D I N G S

THE CLERK: Civil action number 3:09CV00620, ePlus, Incorporated versus Lawson Software, Incorporated. Mr. Scott L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and Mr. Michael G. Strapp represent the plaintiff.

Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. Kirstin L. Stoll-DeBell, Mr. William D. Schultz represent the defendant. Are counsel ready to proceed?

MR. ROBERTSON: Yes, Your Honor.

MR. McDONALD: Yes, Your Honor.

THE COURT: All right. I was very sorry to hear about Ms. Albert's father passing away. You all both wrote letters about it. I don't see the point in bringing that to the attention the jury. Do either one of you?

In the old days, when people didn't do what they were supposed to do, they got keelhauled. I'm about ready to institute that procedure here. It's time for the jury to get going, and I've had to read all this stuff now. I told you what to do about this verdict form, and it was pretty easy, and it's unnecessary to go through all this stuff.

Now, apparently we're going to have to revise it anyway because -- and some of the instructions. What instructions have to be revised because Lawson is not contending that the RIMS brochure is prior art? Which one is

1 arguing?

2 MR. YOUNG: Your Honor, David Young for ePlus. It's
3 instruction 3-A that was submitted to the Court over the
4 weekend. It lists as I think reference number three, RIMS
5 brochure, and that would have to come out now because it
6 appears that Lawson does not have that as an anticipated
7 reference on its own verdict form.

8 THE COURT: Is that right?

9 MR. McDONALD: Yes, that's right, Your Honor.

10 THE COURT: So I suppose I need to tell the jury
11 simply to disregard any testimony about the RIMS brochure as
12 prior art.

13 MR. McDONALD: No, it not anticipatory prior art
14 meaning it's not all by itself anticipating a claim. We're
15 still using it for obviousness and support for the on sale, the
16 RIMS as prior art and 102(a) and (b), but the brochure, all by
17 itself, we're not contending is an anticipating reference, but
18 it would be used to support number one in the instruction which
19 is the Fisher RIMS system as prior art.

20 THE COURT: What do you mean, to be used to support?
21 If you're going to use it --

22 MR. McDONALD: It's evidence of the Fisher RIMS
23 system as it was being sold and --

24 THE COURT: Well, if it's evidence of it, it comes
25 out of 39, too, because you're not contending that it is

1 obvious.

2 MR. McDONALD: So we're saying it is a printed
3 publication and still in it's own right is prior art, but it
4 doesn't all by itself anticipate the claims. It can be used
5 for the obviousness defense. So it is a piece of prior art.
6 It just doesn't anticipate the claims all by itself.

7 THE COURT: Anything? Is that the only modification?

8 MR. YOUNG: Your Honor, it is listed on the Lawson
9 verdict form, so --

10 THE COURT: I'm talking about the instructions right
11 now. That's the only change in the instructions.

12 MR. YOUNG: Yes, yes.

13 THE COURT: I've prepared an instruction on
14 incorporation by reference that says incorporation by reference
15 is a phrase that allows a patent applicant to make another
16 document become part of the patent application in such a manner
17 that the incorporated document can be considered to be part of
18 the patent application just as if the incorporated document had
19 been fully set out in the patent application.

20 I believe that that is a slight modification from the
21 ePlus system -- I mean from the ePlus proposal because it got
22 into whether the examiner considered it and all of that, and
23 that's not necessary, but I think this instruction is accurate.
24 Does anyone disagree with that?

25 MR. McDONALD: We have no objection to that, Your

1 Honor.

2 MR. YOUNG: We have no objection to it, Your Honor.

3 THE COURT: All right. I'll make that then -- where
4 should that go? Let's make it 30-B.

5 MR. YOUNG: I think that would be fine, Your Honor.

6 MR. McDONALD: I'm not sure it goes into the prior
7 art invalidity section, Your Honor. I think it's more about
8 what the patent is, so I would suggest it go earlier.

9 MR. YOUNG: Your Honor, I think it's directly
10 relevant to the prior art issues in the case given the context
11 in which --

12 THE COURT: Given your argument, it seems to me as if
13 it goes right where I put it. I've reviewed the verdict forms,
14 and I think the preferable verdict forms are as ePlus has put
15 them, but how does it have to be changed?

16 MR. YOUNG: I'm sorry, Your Honor. I didn't hear the
17 last point.

18 THE COURT: You said the verdict form had to be
19 changed. How does it have to be changed?

20 MR. YOUNG: I don't think the verdict form from our
21 proposal does need to be changed. It was the jury instruction
22 30-A that needed to be changed to eliminate the RIMS brochure.

23 Neither party's proposal for the verdict form last
24 night included the RIMS brochure as an anticipated reference,
25 so I don't think that aspect needs to be changed.

1 THE COURT: All right, so your form has already made
2 that edit.

3 MR. YOUNG: Correct, and I believe Lawson's as well.

4 THE COURT: All right. Take all the certificate of
5 service and all of that stuff off of it, and we'll have a clean
6 form for the jury.

7 MR. YOUNG: I actually do have some copies of that.

8 THE COURT: Can I have it? I believe that the Lawson
9 form is -- ePlus form is somewhat cumbersome. The Lawson form
10 is confusing, and I think cumbersome is better than confusion.

11 These motions that have been filed, judgment as a
12 matter of law, that's what you argued the other day, right?
13 The motion on 103 is what you argued the other day.

14 MS. STOLL-DeBELL: Yes, sir.

15 THE COURT: I don't need to deal with that to get
16 ready for the jury. Are we ready for the jury?

17 MR. ROBERTSON: Yes, Your Honor.

18 MR. McDONALD: Yes, Your Honor.

19 THE COURT: All right.

20 MR. ROBERTSON: Just to be clear, Your Honor, I'll go
21 first and address the infringement issues, and then Mr.
22 McDonald goes and addresses both, his non-infringement
23 arguments and invalidity, and I have rebuttal. Is that your
24 understanding?

25 THE COURT: Yes. That's what we said.

1 MR. McDONALD: May I ask how much time we should each
2 expect and how much he's reserving for rebuttal?

3 MR. ROBERTSON: I expect that my opening argument
4 will be approximately an hour long, and my rebuttal would be
5 about half an hour to 40 minutes. I'm going to try do this as
6 quickly and efficiently as I can.

7

8 (Jury in.)

9

10 THE COURT: Good morning ladies and gentlemen. Now
11 we've reached the point in the trial where all the evidence is
12 in, and the lawyers now have a chance to make their closing
13 arguments, and in those closing arguments, what they will be
14 doing is reciting to you what they think the evidence shows and
15 explaining to you what they think the evidence proves.

16 And they will try to explain to you why they think
17 you should return a verdict in favor of their respective
18 clients, and that's important because it will help you
19 understand each side of the case and the positions they are
20 taking and what you have to decide. But remember, what they
21 say in these closing arguments is not the evidence. The
22 evidence came from the things that have been admitted into
23 evidence which you will have back with you.

24 You'll have a computer back there that is set so that
25 you can run one piece of the evidence which was the

1 demonstrations that you saw. You'll have your recollection of
2 the testimony, and that's what the evidence is, and the things
3 that were stipulated. You'll of a copy of stipulations also.

4 So if you'll just give to these lawyers -- Mr.
5 Robertson will go first, and then Mr. McDonald, and then Mr.
6 Robertson will close. Then you will hear instructions from me
7 after that.

8 The issues in this case are somewhat lengthy, and so
9 it is anticipated that the arguments will take up most of the
10 morning. So give your attention, and we'll take a break in
11 between because you need to stretch and let your mind refocus.
12 If anybody needs a recess during the arguments, just let us
13 know, raise your hand and stop. All right? Thank you very
14 much. Mr. Robertson.

15 MR. ROBERTSON: Thank you, Your Honor. May it please
16 the Court, good morning ladies and gentlemen of the jury.
17 First, I know I speak for all the attorneys and parties here
18 when I thank you for your public service. You've devoted
19 almost a month serving on this jury, and I understand this
20 trial has interrupted your lives, lives of your families, your
21 friends, and your jobs. We thank you for your patience,
22 thoughtful consideration, and your time.

23 Today you're going to be asked to decide two issues.
24 First you'll have to decide whether the five accused Lawson S3
25 configurations infringe any of the 12 asserted claims in this

1 case. The second thing you'll be asked to determine is whether
2 the asserted claim of the ePlus patents are valid.

3 The Judge will instruct you on the law at the end of
4 the arguments, but it will be up to you to determine what the
5 facts are. Ultimately you will need to decide the issues of
6 infringement and invalidity based on the instructions provided
7 to you by the Judge and the facts as you find them. You're
8 going to have one tool that's going to be invaluable that will
9 allow you to focus on what matters most, and that's going to be
10 your own common sense.

11 Let me talk to you about some basic themes that I
12 think are in this case. As you know, this is about an
13 invention called electronic sourcing system. You've heard
14 testimony from the three inventors of that invention, Doug
15 Momyer, Bob Kinross, and Jim Johnson.

16 The United States Patent and Trademark Office granted
17 those inventors three patents for their electronic sourcing
18 systems and methods. By this time I think you are quite
19 familiar with them; the '683, the '516, and the '172 patents.

20 As you will recall, patents are like a deed to
21 property. You can imagine that the language of the claims that
22 you're going to be looking at are like the boundary lines of
23 that property. Just like someone who steps over those lines on
24 your property, they're trespassing. Somebody who uses a
25 claimed invention that the Patent Office has granted is

1 infringing those patents. ePlus brought this lawsuit to stop
2 Lawson from trespassing on its property and infringing these
3 patents.

4 As the Court will tell you, it does not matter
5 whether Lawson knew that they were trespassing. Trespass is
6 trespass. It doesn't need to be intentional, it doesn't need
7 to be knowingly. It just has to happen, and at this point, we
8 want them off our property.

9 First I want to talk to you about Lawson's
10 infringement in this case. There are a few critical issues to
11 keep in mind when you are reaching your decision. Later on,
12 after I present my infringement arguments, Mr. McDonald will
13 have an opportunity to talk about invalidity. I'm going to
14 save my response to that to the end, because it's not our
15 burden of proof to prove that the patents are valid.

16 As you will hear from the Court, they presumed to be
17 valid by the Patent and Trademark Office, and they come here
18 with that presumption of validity, and it is Lawson that bears
19 a heavy burden of clear and convincing evidence to demonstrate
20 to you that these patents are invalid, and we believe that
21 evidence, when you hear it, fails.

22 First, I would suggest to you that the best evidence
23 of infringement in this case comes from Lawson's own witnesses
24 and Lawson's own documents. The testimony of Lawson's own
25 employees who testified here and the words of their documents

1 reveal clearly that the accused configurations of this S3
2 procurement product infringes ePlus's patents.

3 Second, Lawson's arguments about why they don't
4 infringe, quite frankly, we think have been misleading, it's
5 been misdirection, and it's been smoke and mirrors, and they
6 have to tried to confuse this jury as to why they don't
7 infringe.

8 What I'm going to ask you to do is focus clearly on
9 what the Court has instructed you as the definitions, the
10 construction of the claims terms at issue about what a catalog
11 is, about how you select catalogs, about the issues about
12 searching, about the issues of finding things that are
13 available in inventory, about the things like how you find
14 generally equivalent items by using the cross-reference tables.

15 When Lawson's attorneys hold up a Sears catalog or
16 mention shopping lists or address books, that's just the smoke
17 and mirrors they want you to believe about. Look at the
18 Court's claim construction in your glossary about a catalog,
19 and you will find out that it has nothing to do with the
20 arguments.

21 When you deliberate and you look at Lawson's
22 arguments and you look at the Court's claim construction, these
23 kind of misdirection, misleading arguments will make no sense.

24 Third, this was a significant invention. As you have
25 heard, it took more than a year and a half, millions of

1 dollars, and several highly trained engineers, both at Fisher
2 Scientific and at IBM, to help come together and create and
3 develop this electronic sourcing system patent.

4 It represented a significant advance over the Fisher
5 RIMS system and the IBM TV/2 system. It was far more than just
6 putting these two things together like you might put together a
7 child's snapping Lego blocks.

8 Fourth, the Patent Office thoroughly examined the
9 inventors' patent application for this invention and decided
10 after a review process that spanned more than nine years that
11 the invention should be patented. If you look at the first
12 page of any of the three patents in your notebook, you will see
13 the same examiner, Edward Cosimano, a name that hasn't come up
14 in this trial but was an examiner who looked at these patents
15 and had everything in front of him that Lawson's expert now
16 claims invalidates these patents. The RIMS '989 patent and the
17 two TV/2 brochures were fully before him when he considered
18 these patents over the course of nine years, and he granted
19 three patents and 79 claims. He examined all of them, and he
20 found that they were new, useful, and nonobvious, and that is
21 what matters here.

22 Remember, as I told you in the opening statement, you
23 can get improvements on patents. You can get improvements on
24 inventions. That's what the patent system was built on, to
25 make a better mousetrap, and that's why the patent system

1 exists, and that's how we make advances in technology. As I
2 said in my opening statement, only God creates from nothing.
3 Everybody else stands upon the shoulders of the people who came
4 before them, and they make new and better inventions.

5 Let's put this into perspective a little bit and go
6 back to 1994. We all need to remember, because it's very easy
7 to forget as we sit here today in 2011, but back in the early
8 1990s, Amazon was the world's largest river, not the world's
9 largest retailer, online retailer. Back in the 1990s, most of
10 us had not even heard of the internet. I certainly hadn't.

11 It was back in the early 1990s, almost 20 years ago,
12 that Mr. Momyer, Mr. Kinross, Mr. Johnson, and Mr. Melly, who
13 has since passed away, invented this electronic sourcing system
14 invention. You heard testimony from Mr. Momyer and Mr. Kinross
15 and Mr. Johnson about the state of the procurement industry in
16 the early '90s.

17 At that time, people in the procurement industry
18 still used huge, unwieldy paper catalogs like the Fisher
19 Scientific catalog that had thousands of pages and thousands of
20 items. The inventors here simplified that process to allow
21 people to search electronically for items in catalogs, create
22 requisitions, generate multiple purchase orders, check
23 availability of inventory, check to see and do comparison
24 shopping, and they could all do it from a desktop PC right in
25 your office.

1 Just like that Edison light bulb in which dozens of
2 light bulb patents came before Edison, what he invented was a
3 new improvement, an improved filament on an incandescent bulb
4 that suddenly made the light bulb something new, useful, and
5 nonobvious and is a great success. That's what these inventors
6 did here themselves.

7 Indeed, this electronic sourcing system invention,
8 when the inventors came up with it at Fisher Scientific, was
9 somewhat against the conventional wisdom. You might recall
10 that the invention empowers the end user to actually go out and
11 find products from Fisher's competitors. You might recall that
12 the inventors testified that when they first came up with this,
13 they met resistance from upper management. They were saying,
14 why are we doing this, this doesn't make sense, we're going to
15 go out and allow our customers to buy product from other
16 companies.

17 And so that kind of initial skepticism is something
18 that often happens in the inventive process when people wonder,
19 is this really a smart thing to do, and then suddenly someone
20 realizes that, yes, it is. Indeed, it was such a smart thing
21 for Fisher Scientific to do that they created a new company
22 called Fisher Technology Group, and they spun that company off,
23 and they put these inventors in that company to develop this
24 product, to develop this software, and then market it.

25 You recall that company then later became renamed

1 ProcureNet, and my client, ePlus, acquired ProcureNet back in
2 2001 with all of its assets, all of its products, and it's
3 patents.

4 If we could have the first slide. It's not on my
5 screen. Is it on anybody else's screen?

6 THE COURT: His screen doesn't work.

7 MR. ROBERTSON: It's always something. Everybody has
8 it? All right. So ePlus acquired these patents, and they've
9 been proven to be very valuable. We've had five of ePlus's
10 competitors that have now taken license to the patents-in-suit,
11 and ePlus has earned almost \$60 million in royalties.

12 ePlus and its customers have received awards for
13 these products as you heard from Mr. Farber for the patented
14 technology. It was a long-felt need in this industry, and
15 there was, as I say, even initial skepticism from Fisher
16 Scientific's own management.

17 Notwithstanding that five of our competitors have
18 taken licenses, Lawson, however, now wants you to let them
19 skate free. Lawson now argues the invention was obvious.
20 That's an argument that can only be made 20 years after the
21 fact with 20/20 hindsight.

22 Lawson suggests that sitting here now, it should have
23 been obvious to create an invention that several engineers
24 spent millions of dollars and more than a year, two years to
25 create and that the Patent Office got it wrong, not once, not

1 twice but three times on all 79 claims.

2 The facts and the evidence and the testimony and the
3 documents all show that the invention is not obvious, and it
4 was no easy task. You heard testimony from the inventors and
5 even the IBM employees that Lawson hired as their own paid
6 witnesses about the time, money, and effort involved to create
7 this electronic sourcing system.

8 More than ten IBM employees worked on this project.
9 It took months to develop. You heard that Fisher paid more
10 than \$600,000 to IBM only for part of the development effort.
11 You may recall the Gantt chart that was part of an exhibit the
12 statement of work with IBM.

13 That project required substantial revisions,
14 modifications, and entirely new creations for this electronic
15 sourcing system patent. In fact, there were more -- if you go
16 back and look at this plaintiff's exhibit, there were more than
17 81 tasks that needed to be done over a year and a half that Ms.
18 Pamela Eng testified about. You'll have that chart in the jury
19 room, and I would urge you to look at that and consider what
20 was involved in the development of this project.

21 Keep in mind, too, that after the examining the
22 patent application submitted by the inventors in 1994, the
23 Patent Office decided that there were several inventions.
24 Indeed, the reason that three patents were granted is because
25 the Patent Office could look at that disclosure, that detailed

1 28-column specification and determine that not only were there
2 inventions that were worthy of the '683 patent, there were
3 additional inventions disclosing they were worthy of the '561
4 patent, and there were additional inventions worthy of the '172
5 patent, and it was all based off that same disclosure, that
6 same initial application, that same specification that you will
7 have before you when you review those patents.

8 It is certainly ePlus's burden to prove infringement
9 in this case, and as the Court will instruct you, if you decide
10 that it's simply more likely than not that Lawson infringes any
11 of the 12 asserted claims of the ePlus patents, then ePlus has
12 met its burden. The legal phrase for this is preponderance of
13 the evidence, and the Judge will instruct you on that.

14 You can simply think of that in terms of the classic
15 image of the scales of justice. If the scales tip ever so
16 slightly in ePlus's favor, then ePlus should prevail in your
17 deliberations. Lawson's claim that the patents are invalid,
18 however, as the Judge will instruct you, must be proven on a
19 much stricter standard.

20 Remember, an issued patent is presumed valid because
21 the Patent Office is presumed to have done its job, and the
22 Patent Office has examined all of these patents. So Lawson
23 must prove to you, by clear and convincing evidence, that the
24 patents are not new, not useful, or not obvious.

25 We believe that Lawson's evidence in that respect

1 fails and fails completely. On the Court's verdict form which
2 you will receive, you'll be required to check off boxes as to
3 whether or not ePlus has proven a claim has been infringed or
4 whether or not Lawson has proven that a claim is invalid,
5 either as anticipated, and that is that a reference, a prior
6 art reference they allege to exist fully contains each and
7 every element of every claim. If it does not, it cannot
8 anticipate.

9 You'll be asked in that verdict form whether or not
10 Lawson has proved by clear and convincing evidence that the
11 patents are obvious by some sort of combination of the
12 references. If they do not disclose or teach each and every
13 element of every asserted claim, they have not met their burden
14 of clear and convincing evidence.

15 Let's now turn to the infringement of ePlus's
16 patents. As I've mentioned, it's important to apply the
17 Court's construction that's given in your glossary that you've
18 had for the past three weeks. That is what is going to control
19 here. Those claims have been highlighted. The claims that are
20 at issue have been highlighted in your notebook, but let's just
21 use a couple just to refresh you, and let me go through some of
22 the basic elements involved here.

23 This is claim three of the '683 patent. It's one of
24 those system claims that describe the elements of what the
25 electronic sourcing system invention is. By now, I would hope

1 they are familiar to you, but we have, just to summarize,
2 multiple catalogs, ability to select the catalogs, to search
3 for matching items in those catalogs, to build requisitions
4 from those matching items, to process those requisitions, to
5 generate multiple purchase orders, and then to convert the data
6 in this claim relating to an item from one vendor source to
7 data relating to another vendor source.

8 You remember that's about how you do the comparison
9 shopping, the finding an item from one vendor to compare it to
10 another vendor to see if you want to pay this price or that
11 price or whatever features it might have that would be useful
12 to you.

13 The Court will instruct you that a system claim like
14 this claim three is infringed if the S3 system contains each of
15 the elements of that particular claim, and we think the
16 evidence was overwhelming in that regard.

17 Let's take a look at claim 26 of the '683 just as an
18 exemplary. This was one of the method claims. Remember, the
19 method claims are sort of like the recipe, performing the steps
20 that go through this claim. A method claim is infringed in
21 this case by the customers of the products that Lawson sells.
22 So when Lawson sells a customer this S3 system, and the
23 customer uses that system, it performs every step of this
24 method claim, and so the customer in that instance is what's
25 called the direct infringer, and Lawson is the indirect

1 infringer because it is inducing the customer to directly
2 infringe by using the infringing system.

3 I'll come back to you and explain a little bit more
4 about this, what's called inducing and contributory
5 infringement in a little bit, but fundamentally, those claims
6 are infringed by Lawson just as if the customer was infringing,
7 because Lawson provides the infringing system. And you'll find
8 in the Judge's instructions exactly what this inducement to
9 infringe or contributory infringement is.

10 As I mentioned, it's important to keep in mind the
11 words of the claims as the Court has construed them, because
12 they define what the boundaries are of the invention, both for
13 infringement and for invalidity.

14 So let's talk a little bit about the Lawson
15 infringing S3 system. As you've heard from the Lawson
16 employees, the S3 system is a software system built by modules,
17 and there are at least five configurations now accused of
18 infringement. Lawson has sold these systems to hundreds and
19 hundreds of customers.

20 It's a robust program that allows customers to
21 maintain information about hundreds of thousands of catalog
22 items from tens of thousands of different vendors. You may
23 recall that Mr. Matias -- he testified by videotaped
24 deposition. He was from the Robert Wood Johnson Medical
25 Center. He uses a Lawson infringing system. He had more than

1 36,000 catalog items in that system from 3,000 separate catalog
2 vendors.

3 I asked Mr. Christopherson about the capability of
4 the system. Mr. Christopherson, corporate representative from
5 Lawson, admitted that the system could handle more than
6 hundreds of thousands of items from tens of thousands of
7 different catalog vendors.

8 Dr. Weaver, professor of computer science from the
9 University of Virginia, actually demonstrated the S3 system to
10 show you the different configurations that infringed the ePlus
11 patents. He walked you through several of those systems and
12 used a demonstrative to show you how the various software
13 modules could be combined to perform an infringing system.

14 Initially, as you may recall, you need to have this
15 platform technology, the Lawson system foundation and process
16 flow upon which you build the procurement system that
17 infringes. Without this, the modules can't communicate. It is
18 basic, and we believe it was uncontested through the documents
19 and through the testimony of Lawson's own witnesses that this
20 platform technology was necessary.

21 In configuration number one, which is accused of
22 infringement, the three procurement modules, purchase order,
23 requisitions, and inventory control, based on that foundation,
24 can perform all the necessary functionality for several of the
25 claims that are accused of infringement, and in your verdict

1 form, when you see it, the actual claims that are being accused
2 of infringement will be spelled out with respect to each
3 configuration I'm going to talk about now so there will be no
4 confusion for you when you go back to determine what claims
5 apply to what infringing configuration.

6 So this was the first configuration which was the
7 foundational -- Lawson's system foundation and process flow
8 with the purchase order, requisitions, and inventory control.
9 Second configuration, upon that foundation, you can add the
10 requisition self-service application they called it. You
11 recall one of the things that the requisition self-service
12 application can do is to add that classification code, the
13 UNSPSC we talked about, in order to do the kind of drill-down
14 to get to items that are generally equivalent. This RSS is
15 necessary for that process. It's also necessary for the next
16 configuration which is accused that includes the procurement
17 punchout.

18 Procurement punchout, you will recall, lets you go to
19 vendor websites that have been specially designed to
20 communicate with the Lawson system, and I'm going to talk about
21 the details of procurement punchout functionality in a little
22 bit.

23 The fourth configuration includes this electronic
24 data interchange or EDI. You heard a lot of testimony about
25 how EDI is a communication protocol in order to obtain

1 information, download catalogs into the Lawson system, obtain
2 information about availability of products in inventory. This,
3 again, is another infringing configuration that Dr. Weaver
4 testified about, and finally, we have the last configuration
5 that infringes in this case which includes all of these modules
6 acting together. As you know, all these things can communicate
7 together in order to be able to provide the functionality that
8 these patents are directed to and cover.

9 So let me give you an overview, if I can, of what
10 evidence we believe proves that these configurations infringe.
11 First, Lawson's own employees. Mr. Lohkamp, Mr.
12 Christopherson, and Ms. Raleigh all testified. Mr. Lohkamp,
13 you will recall, was the product strategist. Mr.
14 Christopherson is the director of product development, and Ms.
15 Raleigh was a practice director who does implementation and
16 maintenance and servicing for these systems.

17 Further, Lawson's own documents demonstrate clearly
18 that the S3 system infringes each of the asserted claims.
19 Lawson has been trying throughout this case to run away from
20 these documents that were created long before this lawsuit was
21 ever filed. But, remember, Lawson's own vice president of
22 marketing confirmed that Lawson's engineers and its in-house
23 lawyers and its marketing personnel reviewed those documents to
24 make sure that the information is absolutely accurate and
25 reliable. He testified, of course, they don't want to mislead

1 their customers, and so now they have to live with the
2 documents they created before this lawsuit was ever filed.

3 In addition to the evidence from the mouths of
4 Lawson's employees, in the words of their own documents, you
5 heard about how the S3 system infringes the patents from the
6 expert witnesses, Dr. Weaver and Mr. Niemeyer. You even heard
7 in many instances, although he fought me over and over, Dr.
8 Shamos made concessions about how these systems satisfied the
9 infringing claims.

10 Let me just show you what ePlus's experts
11 demonstrated. What did they do? Dr. Weaver showed you a demo
12 of Lawson's S3 system. You'll actually have that back in the
13 jury room when you deliberate, and you can look at that. Dr.
14 Weaver show you Lawson's system guides and manuals and walked
15 you through them to show you each of the functionalities of the
16 patents.

17 Dr. Weaver showed you those responses to the customer
18 RFPs, those questions the customers asked, and they say, can
19 your system do this. Remember, Mr. Frank, who is their head of
20 marketing, said, we try to be as accurate and truthful as
21 possible, and those responses are vetted by our legal
22 department and our engineers to make sure they are accurate,
23 and in those RFPs, you will see lots of admissions as to the
24 functionality of what they perform, and I'm going to come back
25 in detail to those in a minute, that admit that they satisfy

1 all of the elements of the asserted claims.

2 We saw technical specifications in their
3 documentation. We saw Lawson presentations where they go and
4 meet with their customers, and they tell them in PowerPoints
5 and these webinar presentations or white papers that are
6 available on their website, all of which the Lawson witnesses
7 testified were supposed to be truthful and accurate, and
8 admitted all of the elements of the claims at issue, and we had
9 Mr. Niemeyer, an expert in source code, look at the source code
10 and tell you exactly what it said.

11 That was some dense material, I will grant you, but
12 we put on a source code expert to tell you what the source code
13 revealed, and Lawson had a source code expert and decided not
14 to call him because apparently he had nothing to say to
15 contradict Mr. Niemeyer.

16 So, now, what did Dr. Shamos show you? Dr. Shamos
17 didn't do any demonstrations of the S3 systems. Dr. Shamos
18 didn't discuss any of the system guides or manuals. Dr. Shamos
19 didn't address any of the responses to the customer RFPs. Dr.
20 Shamos never once talked to you about any technical
21 specifications. Dr. Shamos didn't discuss any Lawson
22 presentations, and Dr. Shamos didn't look at the Lawson source
23 code.

24 I think that's very telling. Indeed, when Dr. Shamos
25 testified on non-infringement, he didn't have a single document

1 to show you. Now, why is that? Dr. Shamos had unfettered
2 access to anything that he could want from Lawson. He could
3 have gotten anything that they had. He could have put on his
4 own presentation and showed you this is why it doesn't
5 infringe, let me tell you why it doesn't infringe, you can see
6 it right here. Did he do it? No. Think about that if you
7 would during your deliberations.

8 So what do they have to have hide, and why are they
9 hiding it? Why didn't they get out in front of you and show
10 you how their systems can't infringe? Another interesting
11 issue with Dr. Shamos who testified about non-infringement, you
12 may recall when I asked him, who did you talk to at Lawson. I
13 mean, you're their expert, they're paying you hundreds of
14 dollars an hour, why couldn't you sit down and just talk to
15 somebody at Lawson and ask them questions about it.

16 So why would he bury his head in the sand when there
17 was no reason to? In fact, you may recall I asked him had he
18 even talked to the director of the S3 product development. He
19 told me he didn't even know who that person was. And at that
20 moment on the witness stand, it was literally the first time
21 that Dr. Shamos learned that Mr. Christopherson, the man in
22 charge of this whole project, the man sitting here as Lawson's
23 corporate representative for this entire trial, was right
24 there, and I had to introduce the two of them. Now, does that
25 make sense? Why wouldn't you talk to the man who is in charge

1 of the product development for the very product that's being
2 accused of infringement here?

3 Let's talk a little bit more specifically about some
4 of the issues that are in this case like the arguments about
5 catalogs that Lawson has been making. We think the evidence
6 establishes that Lawson concedes that its S3 system satisfies
7 or meets almost all of the elements of the asserted claims.

8 So Lawson spent most of its time arguing with the
9 Court's definition of catalogs. Why would they do that?
10 Indeed, you may recall that halfway through the case, the Court
11 had to issue an additional instruction with respect to what
12 published by a vendor means, because there had been a lot of
13 argument over that claim term.

14 I asked Dr. Shamos if he agreed -- can we go back to
15 the previous slide for a second? Thanks -- that this
16 definition by the Court, an organized collection of items and
17 associated information was satisfied, and he said it clearly
18 was. And then I asked him if he agreed that a catalog could
19 include, and the Lawson catalog does include, preferably all of
20 these details about an item, about a catalog item that be
21 present, a part number, a price, catalog number, a vendor name,
22 a vendor ID, a textual description of the item, and possibly
23 images relating to the item, and he conceded that was all
24 present in the Lawson system.

25 So the only thing he said that wasn't present, and I

1 asked him, so what we're down to then is this published by a
2 vendor, right? That's the only thing you are saying is absent.
3 Yes, he says.

4 So what's the argument on published by a vendor? You
5 heard a lot of argument here about how -- while Lawson gets the
6 information from a vendor and provides it to the customer or
7 takes what's called a legacy system where a customer has an old
8 system that has catalog information on it, and they'll transfer
9 it to the Lawson system, and all that information originates
10 with is disclosed by, is made generally known by the inventor.
11 What they then argue is, we transform it somehow, we modify it,
12 we may delete some information, we might not include the entire
13 catalog, we might just do portions of the catalog. None of
14 that, as you'll see when you go back and you look at the
15 Court's definition of catalog -- and if we can go back to that
16 for just a second -- has any relevance to this case.

17 That's the smoke and mirrors. That's the
18 misdirection, that's where Lawson is trying to mislead you.
19 All of that, they say, is in the term published by a vendor.
20 Do you have the Court's construction of published by a vendor?

21 Published, according to the Court, an instruction you
22 must follow, is simply to make generally known. Published by a
23 vendor means at some point in time, a vendor such as a
24 supplier, a manufacturer, or a distributor has made generally
25 known or has disclosed an organized collection of items and

1 associated information, all of which -- I won't continue to
2 read -- but that Dr. Shamos concedes is present in the Lawson
3 system.

4 So it all comes down to published by a vendor. All
5 that is is to make generally known or disclose. So what does
6 it matter if the data gets transformed in some way? What does
7 it matter, under the Court's construction, whether it was
8 reformatted? What does it matter if the customer selects the
9 catalog items it wants to put in its catalog database?

10 None of that is relevant to the Court's construction,
11 and all of that has been argued by Lawson in order to try and
12 pull the wool over your eyes that that's required by published
13 by a vendor. But when you go back and you read this
14 construction that the Court has made in its necessary file,
15 you'll see that none of that is relevant.

16 I asked Mr. Christopherson to look about how vendor
17 catalog data is imported, and you may recall that there was an
18 exhibit which will be back in the jury room, Plaintiff's
19 Exhibit Number 521, which was called, I think, the vendor
20 catalog import process. So I asked him how, through this
21 document, Lawson was showing how a vendor item catalog
22 information that is disclosed or made generally known ends up
23 in the database. That was the item master. He said it was
24 correct at a very high level.

25 Well, that's all you need to know at that very high

1 level. It's indeed correct. It ends up in that item master
2 and the vendor item table, and that's how they can obtain and
3 use and utilize that information for performing all the
4 functionality of the claims that are at issue.

5 Similarly, Lawson's employee Hannah Raleigh explained
6 that the Lawson item master can contain catalog information.
7 This was one of the documents they were trying to run away
8 with, but when they were asked how they would get the catalog
9 information -- question was, so this is going through the
10 process when a vendor makes it known to a customer its catalog
11 data, this process is how it ends up in the item master. She
12 said, in one way, yes, and if you look at that, it says,
13 catalog information is part of Lawson's item master.

14 They said that in a document filed long before this
15 lawsuit, and now they tell you something differently. Even Dr.
16 Shamos, even Lawson's own expert, Dr. Shamos, reluctantly
17 agreed that Lawson's own documents show how the S3 system
18 allows Lawson's customers to import catalog information into
19 the item master. I asked him about that same document. So
20 this is going through the process in which, when a vendor makes
21 known to a customer its catalog data, this process is how it
22 ends up in the item master; correct? In one way, yes.

23 Dr. Shamos also agreed that the vendor catalog data
24 includes vendor item description, vendor item number, a
25 manufacturer item number, and UNSPSC codes all of which, when

1 you look at the Court's construction of catalog, satisfied that
2 information.

3 And not only do the Lawson documents prove that
4 Lawson infringes the ePlus patents, but even the documents
5 Lawson created during trial to help prove it doesn't infringe
6 show you exactly how the S3 system is published by a vendor.
7 Mr. Christopherson had a slide, a demonstrative exhibit that he
8 created about the process for the catalog, and when I asked him
9 about that slide, created by them to try to prove to you that
10 their system wasn't infringing, he had to disclose that it is
11 the vendor -- he had to concede that it is the vendor that
12 actually provides the catalog data, and it just makes sense.
13 How would the customer know what the vendor item is? How would
14 the customer know what the vendor price is? How would the
15 customer know what the vendor item description is unless the
16 vendor provided all that information?

17 It was even arguments about, well, sometimes the
18 customers, our customers negotiate the prices with the vendors
19 and get special prices, not their typical list prices. The
20 response you should be thinking about that when you read the
21 Court's construction is, so what. It's still a price. That's
22 all the Court required, just a price to be there. Whether it's
23 negotiated, whether it's a list or whether it's otherwise, it
24 doesn't really matter.

25 I asked him with respect to that slide that he had

1 created to try to convince you that the item master was somehow
2 different, so in your layperson understanding, by giving that
3 information, that item information, is it disclosing it to the
4 customer?

5 Answer: It's disclosing that to the customer.

6 And it's making it generally known to the customer;
7 right?

8 It's making it known to that customer, yes.

9 That's all the Court's definition of published by a
10 vendor requires.

11 So Lawson's employees, Lawson's experts and Lawson's
12 documents reveal that the accused configurations of this S3
13 procurement system has catalogs.

14 So how did they try to convince you they didn't?
15 Well, Lawson showed you a Sears catalog and talked about
16 grocery lists. Lawson is attempting to distract you from that
17 definition. Lawson says, for example, well, you know, if I
18 take a phonebook, and I just take a few of the numbers and put
19 it my address book, does that make my address book a phonebook?

20 Well, I think you've heard testimony that these
21 systems cost hundreds of thousands, if not millions of dollars,
22 and take months to implement. Who's going to buy a system like
23 that and put a handful of items in there? Who is going to buy
24 a system and make it -- instead of having a robust list of all
25 the data you could buy from the grocery, just put in five

1 things from the grocery list? They don't do that, and that's
2 not the evidence here.

3 As I say, Mr. Matias testified that his system had
4 36,000 catalog items and 3,000 catalog vendors.
5 Mr. Christopherson said it could have hundreds of thousands of
6 items and tens of thousands of catalog vendors. Nobody buys
7 these systems to implement them and put them there if they're
8 only going to be using them for a handful of items. That just
9 simply makes no sense.

10 So another argument was made that the item master
11 itself has to be published by the vendor. There's no evidence
12 whatsoever for that, and the Court's construction says nothing
13 about that. The issue is not whether the item master is made
14 generally known. What counts is whether the information of the
15 catalog items ends up in the item master. That's what matters
16 and was made generally known or disclosed by a vendor, and the
17 evidence of that, again, I would suggest to you is
18 overwhelming.

19 So, first, Lawson's first argument is the item master
20 is not published by a catalog. Again, I'm not going to go
21 through this slide in detail because it's fairly wordy, but if
22 you'll go back, you'll see that that argument is completely
23 inconsistent with the Court's construction.

24 Second, Lawson's argument is the customers select
25 items for the item master. Again, when you go back and look at

1 the Court's construction, who selects the items to put in the
2 item master doesn't matter. At the end of the day, what you
3 need is a database of catalog items, and they have that. It
4 doesn't matter if the customer selected it, Lawson selected it,
5 or some other third party selected it. It has nothing to do
6 with the Court's construction.

7 Even Dr. Shamos agreed. I asked him, published
8 simply means to make generally known. So that has nothing to
9 do with who selects the date for inclusion in the item master;
10 correct? Yes.

11 Next, throughout the trial, you've heard that
12 Lawson's customers only import parts of the vendors' catalog.
13 Now, there was evidence and was testimony that the capability
14 of the system could include and import entire catalogs if they
15 wanted to, but nowhere in the Court's construction does it say
16 that importing only a part of the catalog renders it a
17 non-catalog. Indeed, I asked Lawson's expert, where in the
18 Court's construction of catalog does it say that you have to
19 have all of the item information included?

20 Answer: Well, I don't think it says that at all. I
21 know it doesn't say all, and I don't think you have to have
22 all.

23 And he's right, but that's one of the arguments that
24 Lawson had advanced in this case to say that it wasn't
25 published by a vendor.

1 Mr. Christopherson testified about importing an
2 entire vendor catalog. I asked him using this EDI capability,
3 this electronic data interchange module, does it have the
4 capability of importing an entire vendor catalog into the item
5 master?

6 Answer: It has that capability as you're defining
7 it, yes.

8 Lawson's own documents show that the S3 system can
9 import entire vendor catalogs. This was the vendor import
10 feature -- this is Plaintiff's Exhibit Number 398 -- and I
11 pulled this out. The purpose of this import process was that
12 the data could be a vendor catalog that contains information
13 about all the items that a vendor carries.

14 And when you are deliberating and reviewing the
15 Judge's instructions, I'd like you to keep in mind about this
16 issue about capability, whether the system has the capability
17 of doing all the things we've said, because a system such as
18 Lawson's has that capability, and when you are listening to the
19 Court's instructions, you may hear that Lawson argues it
20 doesn't infringe because sometimes, sometimes a user of the S3
21 system might not perform all the steps of the method claims or
22 that in certain configurations, the system might not include
23 all of the elements of the claims, but the Court will instruct
24 you that the fact that a product or process may operate in a
25 manner that does not infringe is not a defense of infringement

1 against Lawson if the S3 system is reasonably capable of
2 operating in a manner that satisfies the claim limitations and
3 it has that capability.

4 It can search by vendor name, it can search by vendor
5 product number, it can search by keyword, it can search using
6 the UNSPSC classification code system to find items that are
7 equivalent.

8 Then I talked about catalogs. I'd like to talk about
9 the evidence remaining for some of the other claim elements.
10 First, let's look at the sample system claim three again, if we
11 can. One of the elements, as you see there, the second
12 element, is selecting the product catalogs to search. This
13 element can be satisfied in a variety of ways.

14 First, we demonstrated that the S3 system, and Dr.
15 Weaver showed you that you can search for keywords in order to
16 locate specific items from specific catalogs. If I have
17 catalogs involving computers, like Dell or like Hewlett Packard
18 or IBM, and then I have catalogs involving things from Home
19 Depot, if I search for the word laptop as a keyword, I'm only
20 going to get those catalogs that are selling laptops like Dell
21 and Hewlett Packard.

22 You can also search under a vendor name. You'll
23 remember I asked Mr. Christopherson and Dr. Shamos about
24 whether or not, in fact, you could use one of those multiple
25 user-generated criteria -- there were fields that you could

1 fill out with what were called alphanumeric -- that's both
2 letters and numbers -- and you could put in, for example, a
3 vendor name, and then you could search using that vendor name
4 to get that specific catalog.

5 So one of the questions I asked Mr. Christopherson,
6 if I'm searching in that alpha field and it has a vendor name,
7 I could search by vendor name; correct?

8 You would get back those entries, yes.

9 Those vendors?

10 Yes.

11 I asked Dr. Shamos, if one of those user-defined
12 fields, I had a vendor name, the Lawson software presents a
13 user interface that would allow me to select that field;
14 correct?

15 If you -- yes, in a sense.

16 I don't know why he had to qualify in a sense, but
17 certainly the answer was yes.

18 Now, Lawson may also try to argue that RFP responses
19 don't really mean what they say. As I say, they were vetted.
20 Can we go back to the one where -- this was the testimony of
21 Mr. Frank, and I asked him during his deposition, it's not
22 Lawson's intent to mislead anybody about the features and
23 functionality of the software products; right?

24 That's correct.

25 So if we were looking at a response to an RFP with

1 respect to the features and functionality of an ERP solution,
2 that's an enterprise resource planning solution, like the ones
3 we're talking about here, procurement, such as S3, we should be
4 able to rely on the accuracy of that information; correct?

5 That's correct.

6 Do we have the slide with Mr. Lohkamp?

7 This was the testimony of Mr. Lohkamp when I asked
8 him about a response to an RFP that Lawson represents is
9 accurate.

10 I asked, what did Lawson answer when it was asked
11 whether it could search by a vendor name?

12 We answered yes.

13 Can we go to the slide for Deaconess? Here is a
14 response that Lawson made to a request for proposal for the
15 Deaconess Health System.

16 Question: Can requisition searches be performed in
17 the following ways?

18 Yes.

19 By description with the option of using wild cards
20 which are wild card keywords that you can do.

21 Yes.

22 By catalog number?

23 Yes.

24 By manufacturer number?

25 Yes.

1 Others?

2 Yes.

3 Vendor item number, vendor description, item
4 user-defined fields, generic name, and search by the UNSPSC.
5 That's what Lawson represented when it was telling the
6 Deaconess Health System how its system performed.

7 Go to the next slide, please. Here was a response to
8 a request for proposal from the CML Health Care about the
9 functionality of these accused systems. Does the system have
10 the ability for expanded item search by vendor catalog number,
11 partial description, manufacturer code, classification code,
12 vendor name, manufacturer name?

13 Answer: AX, which meant available as installed.
14 Right out of the box it has that capability.

15 I've already covered this, but I think the S3 system,
16 the testimony was, can also select product catalogs to search
17 by using those user-defined fields, the search for vendors as
18 both Mr. Christopherson and Dr. Shamos testified. So now we've
19 seen that the Lawson system clearly has catalogs and clearly
20 can select product catalogs to search.

21 The next item was searching for matching items after
22 you select the product catalogs to search. You may recall that
23 Dr. Weaver explained in his demonstrations how this element was
24 meant. Dr. Weaver showed that the accused S3 system uses an
25 index that allows selected portions of the database for

1 selected catalogs to be searched separately.

2 An index, you may recall, is just like an index to a
3 book. If I have a history book that has the history of the
4 Civil War and I want to go and look up something like the
5 Battle of Vicksburg, instead of going through every single page
6 of that book -- and, if you will, the book is the database --
7 instead of having to go page by page to find where the Battle
8 of Vicksburg is, I can go to that index, look up under V, find
9 Vicksburg, and it will point me exactly to the pages that
10 describe and discuss the Battle of Vicksburg.

11 That's a fast way, a speedy way to find what I want
12 instead of having to go through the database, if you will, page
13 by page by page, and that's what the index does. So although
14 Lawson agreed that the S3 has an index, Dr. Shamos says that,
15 nonetheless, you had to search the entire database.

16 I pointed him to a dictionary definition, if I could,
17 an independent dictionary definition. This is from *Webster's*
18 *New World Computer Dictionary*, and what it essentially says
19 there is when you have this index, which was the term that was
20 being defined, you don't have to search and sort the database.
21 The program uses the index rather than the full database. In
22 other words, the program uses the index to locate the data
23 record that you want right away.

24 What did Dr. Shamos argue to you? Dr. Shamos made an
25 analogy to a pantry. Do you recall that? And he said if you

1 alphabetized all of the things in your pantry, in other words
2 so it was organized and indexed, and if you wanted to find
3 something like an apple, you still had to go through the entire
4 database all the way down to zucchini notwithstanding you had
5 created an index so you could find quickly the data record you
6 want, if you will. I would submit that that made no sense when
7 Dr. Shamos made that argument, made no sense then and it makes
8 no sense now.

9 The bottom line is Dr. Weaver showed you there an
10 actual demonstration how searching system meets the claim
11 element, and Dr. Shamos offered no demonstrations and discussed
12 no documents.

13 Lawson doesn't dispute that the S3 system is capable
14 of building requisitions and generating multiple purchase
15 orders, so we don't need to spend much time on those elements.
16 I think Mr. Lohkamp, indeed, conceded as much.

17 Isn't it, in fact, how Lawson markets this
18 requisition self-service application, by saying, in effect, you
19 can now distribute that capability to many of your employees to
20 have the ability to search for matching items, build
21 requisitions, and generate multiple purchase orders; correct?

22 We market it as a way for them to search those items
23 and create requisitions.

24 Let's turn, if we can now, to this element about
25 converting data, this sort of comparison shopping feature that

1 are in the patents. Lawson's employees and Lawson's customers
2 and Dr. Weaver have all testified that the S3 system, with this
3 requisition self-service module, includes that category search
4 functionality under the UNSPSC for cross-referencing. There's
5 been a great deal of evidence about this element.

6 You will recall seeing in some of the fields, you
7 could put in those family, segment, commodity levels that would
8 let you drill down to get to specific items that were generally
9 equivalent.

10 If we can look at PX-11, page 12. Blow that up for
11 me. These were the various categories, the hierarchical levels
12 that you could put into the Lawson system that were all
13 conceded that were present and could be used. Dr. Shamos
14 actually even relied on this white paper, and the white paper
15 shows you that the products at this level, the commodity level,
16 which are included in the Lawson system, is capable of doing
17 that, are a group of substitutable products or services.

18 This is the same white paper that Dr. Shamos relied
19 on in his testimony, although later on, when I asked him about
20 that question, he tried to run away from that part of it and
21 said, oh, well, I don't think that's accurate. I said, in any
22 event, you relied on the UNSPSC white paper when you gave your
23 testimony about the capability of the UNSPSC, right? Yes.

24 Under commodity, doesn't this white paper represent
25 that when you get to that level, you have a group of

1 substitutable products or services; correct?

2 Well, I think they say that, but it's clearly not
3 correct.

4 He relies on it in one instance, but when it
5 contradicts what he wants to say in another instance, suddenly
6 the paper's not correct.

7 You may also recall that Mr. Yuhasz, a gentleman from
8 Novant Hospital who is a customer of Lawson, testified. He
9 agreed when a user of the system employs that UNSPSC, you can
10 find items from multiple vendors with the same code. I won't
11 go through all that testimony, but I think you'll see he
12 conceded yes.

13 I asked Mr. Christopherson, the corporate
14 representative, isn't it true that a user of the Lawson system
15 that has this UNSPSC capability can find items from different
16 vendors that were all cross-referenced to the same product
17 category. That's correct, yes.

18 So clearly that UNSPSC code is included in the Lawson
19 system for a reason. It's not just there for no reason. They
20 include it to use it as a tool in order to do this kind of
21 cross-referencing.

22 Let's talk a little bit about the inventory
23 capability of the Lawson system if we can. You will recall
24 that Dr. Weaver did a demonstration in which he used punchout,
25 and one of the times when he was looking for a laptop bag, he

1 got back information that it was temporarily out of stock,
2 please check back soon. Clearly, using the Lawson system,
3 using that punchout capability, there was the capability of
4 determining whether a selected matching item was available in
5 inventory.

6 That functionality is also available with the systems
7 that use the EDI or electronic data interchange capability.
8 Dr. Weaver showed you, if we're using the electronic data
9 interchange module, the purchase order goes to a vendor, and
10 the vendor can reply and the purchase order responds as to
11 whether that item is available in inventory, for example,
12 whether or not the item was backordered. During his
13 demonstration, he showed you a situation in which that
14 happened, and you'll be able to look at that when you're in
15 your deliberations.

16 Let's talk a little bit about this punchout
17 capability. As you know, there's a punchout application that
18 Lawson includes that is accused of infringement in one of the
19 five configurations. Dr. Weaver's demonstration of the
20 punchout capability showed how a punchout user can determine
21 whether an item is available in inventory, and it showed how
22 Lawson creates, communicates, and controls the punchout trading
23 partner websites that an S3 user punches out to.

24 You don't punch out to Dell.com, for example, when
25 you are doing that. You punch out to a specially created Dell

1 punchout website that Lawson has worked with Dell in order to
2 set up the communication protocols in order to do that.

3 For example, we can look at the next slide. Here
4 you'll see, and the testimony was that Lawson, when you use
5 this punchout capability, you are always within the Lawson
6 system and that this is not, notwithstanding we are looking at
7 products that are available from the Dell catalog, this is a
8 special Dell website for this, and Dr. Weaver pointed out that
9 you can tell that from what's called the URL address.

10 You are at the Lawson server.corpnet.lawson.com when
11 you are there looking at these Dell products. Lawson
12 established that, Lawson created that, Lawson designed it, and
13 Lawson set up all of the necessary architectures and
14 communication protocols in order to do that.

15 You even heard from Mr. Lohkamp, the product
16 strategist, about how Lawson enters into agreements with its
17 punchout trading partners to develop that connection. He also
18 explained how the punchout partners pay Lawson to configure and
19 test and set up the connection. He said those contracts were
20 mutually beneficial.

21 Now, he also said he had a number of relationships
22 with punchout trading partners that were not contractual, but
23 when I asked him, were they mutually beneficial as well to both
24 Lawson and to the trading partners, he said, yes.

25 If I can just talk to you a little bit about the

1 punchout architecture to show you Lawson keeps a bear hug
2 around this entire process, if we can go to the punchout
3 architecture slide.

4 This was one of the Lawson documents. It's the
5 procurement punchout guide, I believe, Plaintiff's Exhibit
6 Number 211. Dr. Weaver testified as to the eight steps that
7 are necessary in order to do the punchout process. These eight
8 steps are set up by Lawson in order to provide this
9 functionality through a user of the punchout system.

10 I'm not going to go through all eight, but that
11 exhibit is back in evidence, and it demonstrates clearly that
12 Lawson is the one that has created, designed, and instituted
13 this entire process to provide that architecture to the user of
14 the system in order to perform the search, the selection, and
15 retrieval of the information necessary to then fill out a
16 requisition and build the purchase orders.

17 Indeed, I thought it was very interesting. The term
18 that Mr. Lohkamp used is that they have to create the handshake
19 with their punchout trading partners in order to do that. Each
20 of these steps is controlled by Lawson, and Lawson controls the
21 authorization process, and Lawson establishes the connection,
22 and Lawson retrieves the information in order to complete the
23 entire purchase process.

24 It was Mr. Lohkamp who also confirmed that Lawson
25 provides the assistance to its customers including manuals,

1 training services, and implementation services all to help them
2 configure the procurement punchout with its partners. Indeed,
3 the user of the Lawson system tells Lawson what punchout
4 trading partners they want available to their system, and then
5 Lawson will indeed to do that, and then they charge for that
6 service.

7 May I have the next slide, 43. Indeed, I asked
8 Mr. Christopherson, when the Lawson system punches out to the
9 punchout creating the partner's catalog, you remain connected
10 to the Lawson system; correct? Correct.

11 I'd like to talk to you a little bit now about what's
12 call indirect infringement, some of these issues about inducing
13 and contributory infringement. Indirect infringement, like
14 direct infringement, is still infringement, and ePlus, we
15 believe, has shown through the testimony, again, of Lawson's
16 own witnesses and its own documents that Lawson infringes the
17 claims of the patent both directly and indirectly.

18 The Court will instruct you that Lawson may directly
19 infringe the patents even if they believe in good faith what
20 they are doing is not infringement of any of the patents. The
21 Court will also explain to you the law concerning indirect
22 infringement. In a nutshell, ePlus asserts that Lawson has
23 both induced and contributed to the infringement of ePlus's
24 patents.

25 So what does that mean? Well, to show induced

1 infringement, ePlus must prove simply by a preponderance of the
2 evidence that Lawson's customers have directly infringed the
3 ePlus patents and that Lawson has actively or knowingly aided
4 and abetted that direct infringement, that Lawson encouraged
5 their customers to infringe.

6 Well, of course they did. They sold them the
7 infringing system in the first instance, and they implemented,
8 they maintained it, they serviced it, they instructed him how
9 to do it. They provide all of the customer support systems
10 including the online services, the training manuals, and
11 guides. They did the webinar instructional sites. You saw all
12 of that evidence. All of that is aiding, abetting, assisting,
13 and encouraging the customers to do the actual direct
14 infringement of those method claims by performing every single
15 step. Indeed, I didn't think there was much dispute when
16 either Mr. Lohkamp or Ms. Raleigh testified that they were, in
17 fact, doing that.

18 The Court will also instruct you that Lawson can be
19 liable for contributory infringement of a claim if ePlus
20 proves, simply by a preponderance of the evidence, that Lawson
21 sells or offers for sale a component of the S3 system that has
22 no substantial non-infringing use. Let me say that again. No
23 substantial non-infringing use.

24 Well, of course it doesn't. These systems are
25 designed to do one thing and one thing only, to do that

1 procurement process that has been described that infringes
2 ePlus's patents. It has no other real non-infringing
3 functionality when you think about it. That's what it's
4 intended for, and that's how it was used.

5 So ePlus has proved -- can I have the next slide --
6 through the testimony that not only does Lawson directly but
7 also indirectly infringes the patents.

8 Ms. Raleigh was asked, among the aspects included
9 with implementation would be all aspects up to and including
10 bringing a system live into actual production operation; is
11 that correct? That's right. So not only do they sell it to
12 you, they set it up for you.

13 One of Lawson's customers, Ms. Oliver, who testified
14 by deposition from Blount Memorial Hospital said that a Lawson
15 employee actually came to Blount Memorial for seven months to
16 install, implement, and actually load catalog data into the
17 item master of their S3 system. Ms. Raleigh testified that
18 Lawson was involved in all aspects of bringing that system into
19 actual production.

20 Second, Lawson indirectly infringes the ePlus patents
21 because Lawson is aware of the ePlus patents. Mr. Lohkamp
22 admitted that everyone at Lawson has been aware of the ePlus
23 patents since May of 2009; isn't that right?

24 I believe so.

25 So in conclusion, to sum up this evidence, I want to

1 return to the five different configurations that Dr. Weaver
2 carefully walked you through to explain how the features
3 available infringe. You've heard from Lawson's employees, and
4 you've seen their documents, and you'll have additional
5 documents back in the jury room that you can consider on issues
6 of infringement.

7 That evidence has shown that configuration one with
8 the inventory control requisition and purchase orders includes
9 the patent element that we've discussed. As I say, the verdict
10 form will provide this for you, so you don't have to commit
11 this all to memory, but configuration number one infringes
12 claims one and six of the '516 patent as you'll have there
13 including the S3 procurement modules for purchase order,
14 requisitions, and inventory control.

15 It has catalogs, you can select catalogs, you can
16 search for matching items, you can build requisitions, and you
17 can generate multiple purchase orders. That's an infringing
18 system. As we discussed, there are multiple ways to get that
19 catalog information to put into the item master including the
20 EDI, catalog download, the vendor can provide you with Excel
21 spreadsheets that have the catalog data. The vendor can
22 provide you with CD-ROMs that have the catalog data. You can
23 do that vendor catalog upload process that was discussed with
24 Mr. Christopherson, and you can do the punchout process in
25 order to obtain catalog data information from the Lawson

1 punchout trading partners.

2 The evidence you have seen shows additional modules
3 that add functionality for the other four configurations. For
4 example, just to refresh, the requisition self module --
5 requisition self-service module allows users to find identical
6 or generally equivalent items because it has that UNSPSC
7 capability.

8 You've also heard evidence about how the Lawson EDI
9 and punchout modules allows users to determine whether an item,
10 if selected, is available in inventory. Configuration three
11 adds punchout which you've seen evidence as to how users can go
12 to multiple vendor catalogs and determine availability in
13 inventory as to what is there, and Dr. Weaver's demonstrations
14 performed that for you.

15 Going to configuration four, EDI, like punchout,
16 allows a user to get messages to tell you whether the catalog
17 vendor has an item available in inventory. So that is
18 implicated by the patents including claims three, 26, of the
19 '683 patent and claims one and six of the '516 patent, and,
20 again, you'll see that on your verdict form.

21 Finally, configuration five is a configuration that
22 has all the software modules, and so all of the claims asserted
23 in this case are infringed by configuration five, because all
24 of the elements of the claims are met.

25 So let me sum up by remarking that even though ePlus

1 needs to show that it's just slightly more likely than not that
2 Lawson infringes, in fact the evidence of infringement you
3 heard is substantial, it is compelling, and the best evidence
4 on this comes from Lawson's own witnesses and straight from the
5 lips of Lawson's own employees.

6 Lawson's main defense, therefore, has been to twist
7 or ignore the Court's definition of catalogs or published by a
8 vendor. When you disregard those misleading arguments and that
9 misdirection and that smoke and mirrors, there is really no
10 dispute that the S3 system, in all five configurations,
11 infringes all 12 of the asserted claims in this case. Thank
12 you for your attention.

13 THE COURT: Would you all like to take a little break
14 to stretch? We're going to hear another hour-plus of argument
15 now from Mr. McDonald; is that about right?

16 MR. McDONALD: Yes.

17 THE COURT: Would you like to take a little break?
18 We'll take a 15-minute recess.

19
20 (Jury out.)

21
22 THE COURT: We'll be in recess.

23
24 (Brief recess.)
25